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WRITER'S DIRECT DIAL NUMBER

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kwalkup@wyattfirm.com

July 3, 2000

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

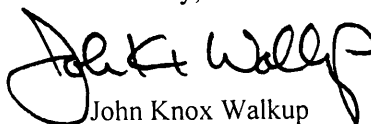
VIA HAND DELIVERY

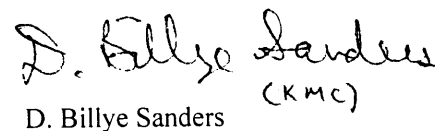
RE: Application of Memphis Networkx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light, Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement between MLGW and A&L regarding Joint Ownership of Memphis Networkx, LLC; Docket No. 99-00909 - Response to Motion to Reschedule Hearing

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) of the response of Memphis Networkx, LLC, Memphis Light, Gas & Water Division and A&L Networks-Tennessee, LLC to Motion to Reschedule Hearing.

Sincerely,


John Knox Walkup


D. Billye Sanders (KMC)

JKW/kms

Enclosures

cc: Parties of Record
J. Maxwell Williams, Esq.
Ward Huddleston

45158660.1

*Proprietary
info
on File*

POSTED
7-600

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF MEMPHIS)
NETWORKX, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATION SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT, GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW"), A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORKX, LLC.)

DOCKET NO. 99-00909

RESPONSE IN OPPOSITION TO MOTION TO RESCHEDULE HEARING

Applicant, Memphis Networkx, LLC, and Joint Petitioners, Memphis Light Gas and Water Division and A&L Networkx-Tennessee, LLC, in response to the Motion of Intervenors, Time Warner Communications of the Mid-South, Time Warner Telecommunications of the Mid-South, L.P., and the Tennessee Cable Telecommunications Association ("Movants") to reschedule the hearing of this cause presently set for July 17, 2000, would respectfully state in opposition to that motion as follows:

1. On November 24, 1999, the Application and Joint Petition in this matter were filed. Supplemental exhibits to that application were filed on January 11, 2000, and responses by the Applicants to the first data requests of the Tennessee Regulatory Authority ("TRA") staff, together with pre-filed testimony, were filed on February 4, 2000.
2. On January 5, 2000, a Pre-Hearing Officer was appointed, and the first Pre-Hearing Conference was set for February 17, 2000.
3. On March 9, 2000, the Report and Recommendation of the Pre-Hearing Officer was filed containing the list of issues.

4. On March 15, 2000, the Tennessee Regulatory Authority issued a Notice of Hearing in this matter, setting the hearing for March 29 and 30, 2000, at 9:00 a.m.

5. On April 3, 2000, the Tennessee Regulatory Authority issued a Notice of Hearing setting the hearing for Thursday, April 13, 2000, and Friday, April 14, 2000, at 9:00 a.m.

6. On April 11, 2000, at the conference of the Tennessee Regulatory Authority, the Directors denied the request of the Applicant and Joint Petitioners that the hearing dates of April 13 and 14 remain in effect and set the hearing for May 1-5, 2000.

7. On May 2, 2000, the Tennessee Regulatory Authority denied the request of Applicant and Joint Petitioners to proceed to the hearing of this matter and remanded the matter to the Pre-Hearing Officer to establish a new procedural schedule.

8. On May 12, 2000, Applicant and Joint Petitioners filed a request that the Tennessee Regulatory Authority set a hearing on this matter.

9. On June 1, 2000, Time Warner Communications of the Mid-South, Time Warner Telephone Communications of the Mid-South, LP, and the Tennessee Cable Telecommunications Association filed a Motion for Bifurcated Hearing and requested that no hearing be set from June 20 through July 5, 2000.

10. On June 5, 2000, the Applicant and Joint Petitioners requested that the Tennessee Regulatory Authority consider their request to set a hearing at the conclusion of the TRA docket for that day. That request was transferred for consideration by the Pre-Hearing Officer. While no hearing date was established by the Pre-Hearing Officer at that conference on June 6, 2000, the Pre-Hearing Officer specifically stated that the week of July 17, 2000, represented the first date where a series of days would be available for uninterrupted consideration of this matter. No counsel, including counsel for the Movants herein indicated any objection to such date, other than counsel for the Applicants and Joint Petitioners who requested a date earlier than the week of July 17, 2000. Indeed, it was the expressed desire of the Movants herein and their counsel to make sure that the dates of June 20 through July 5, 2000 were not the dates scheduled for any hearing on the matter.

11. Counsel for MLGW and counsel for the Movants also discussed the July 17-20 hearing dates with the Pre-Hearing Officer after the June 20, 2000 Authority Conference. Mr. Collier informed counsel for MLGW and the Movants that he had submitted the July 17-20 dates to the Directors for consideration. Once again, counsel for the Movants did not raise any concerns regarding this potential hearing date or the unavailability of a witness.

12. On June 22, 2000, the Tennessee Regulatory Authority issued a Notice of Hearing setting that hearing for July 17, 18, 19, and 20, 2000.

13. On June 29, 2000, the last day for filing any pre-hearing motion, the Movants filed a Motion to Reschedule Hearing stating that "their sole expert witness and technical analyst/consultant, William H. Barta ("Mr. Barta") will be unavailable to attend the hearing due to a prior commitment to appear before the Florida Public Service Commission ("FPSC")" in FPSC Docket 99-00649.

14. The notice of hearing in the Florida docket, which set the matter for July 17-19, 2000, was formally issued on June 27, 2000. A copy of the notice is attached to this response as **Exhibit 1**. The hearing, however, had been set, and communicated to the parties, as early as December, 1999. Such date was confirmed by Laura King, a staff person for the Florida Public Service Commission working on this docket. Mr. Barta had been involved in the Florida docket since August, 1999 when he first filed testimony on behalf of the Florida Cable Telecommunications Association ("FCTA"), which was later adopted by Time Warner Telecom of Florida, L.P. Thus, Mr. Barta was well aware of the hearing date in the Florida docket. In fact, Mr. Barta filed rebuttal testimony on behalf of FCTA in the Florida docket only two days after the June 6, 2000 Pre-Hearing Conference. This rebuttal testimony was subsequently adopted by Time Warner Telecom of Florida. Time Warner Telecom of Florida is represented in that docket by Carolyn Marek, who also participated in the settlement discussions held between the parties in the Tennessee docket on May 1-2, 2000 on behalf of Time Warner Telecom of the Mid-South, LP and is copied on the cover letter to the Executive Secretary accompanying Movant's Motion to Reschedule Hearing. A copy of the parties of record, noting Ms. Marek's

representation, is attached to this Response as **Exhibit 2**. Thus, Mr. Barta, and presumably counsel for the Movants were aware, should have been aware, or certainly could have been aware, with reasonable diligence, of this "prior commitment" prior to the setting of the hearing in the case at hand.

15. Movants had previously supplied the Authority with dates that were objectionable to them based on the unavailability of one counsel for the Movants. That request to exclude the dates of June 20 to July 5 has been granted in effect, inasmuch as no hearings were scheduled during that time and the Pre-Hearing Conference is scheduled after the conclusion of the time period.

16. As discussed above, the hearing dates of July 17-20 had been discussed with the parties in this docket as early as June 6, 2000. The official notice of hearing was issued on June 22, 2000. Counsel for the Movants, however, chose to raise objection to this hearing date on June 29, 2000, the last possible day motions would be accepted in this docket. Counsel for the Movants was well aware of the difficulties facing the Authority staff in attempting to find a date that met all of the parties' and the Directors' schedules. Yet no concerns were raised concerning these dates until the last possible moment.

17. The actions of the Movants to object to hearing dates one-at-a-time with (1) a request filed on June 1 to object to June 20 to July 5 and (2) four weeks later on June 29 to object to July 17-20 should not be allowed to further postpone this hearing.

18. Close examination of the Movants' request does not reveal Mr. Barta's unavailability, but rather a choice by clients and counsel whether to prefer a Florida regulatory proceeding over a Tennessee proceeding. The clients involved are a Time Warner entity in Florida and two Time Warner entities in Tennessee, as well as the Cable Telecommunications Associations in Florida and Tennessee. Mr. Barta is not unavailable due to reasons personal to Mr. Barta's life, but rather unavailable if the clients and counsel choose to prefer Florida proceedings over Tennessee proceedings. Tennessee regulators and the Applicant/Joint Petitioners should not have their schedules changed or rejected by the preferences of these

clients. The Tennessee Regulatory Authority should set its own schedule and parties, including these Movants, should have those individuals present at the hearing they consider necessary.

19. It should also be noted that no proceedings will be held in the Florida docket on July 20, and presumably Mr. Barta would be available to testify on that date. If the Movants desire to have Mr. Barta testify on July 20, they should so request. The Applicant and Joint Petitioners are willing to work with the Authority and the Movants regarding the schedule for that day.

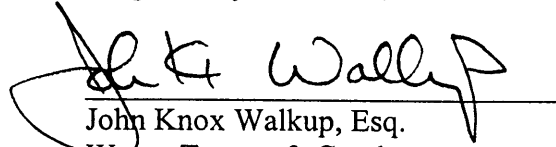
20. The Applicant and Joint Petitioners are entitled to a hearing on the date scheduled. The Applicant and Joint Petitioners have responded to fifty-eight (58) data requests from the Tennessee Cable Telecommunications Association, eighteen (18) data requests from NextLink, and two (2) sets of three (3) requests from the TRA staff. On May 11, 2000, the Applicants and Joint Petitioners responded to an exhaustive list of fifty-two (52) data requests from TRA staff. Five (5) of the Applicants/Joint Petitioners' witnesses have been deposed and further documents were then requested. Thousands of pages were produced under public records act requests and others in response to subpoenas.

21. Delay in this proceeding has been an expensive hardship on the Applicant and Joint Petitioners. To meet the high quality of service desired, this entity hired very capable staff and obtained office space in October and has paid operating expenses since then. Legal costs, unobtained revenue, increased cost of financing, loss of prime construction weather, morale and retention challenges, and travel costs to accommodate previous schedules of proceedings aggregate to substantial financial and opportunity costs. Further delay could only prejudice the Applicant and Joint Petitioners.

22. The Movants were well aware, or should have been aware, of the commitments of Mr. Barta, their "key witness" several weeks, if not months, ago. The failure to raise these concerns in a timely manner, Mr. Barta's continued availability if the clients choose to have him present in Tennessee proceedings rather than Florida proceedings, and Mr. Barta's availability on July 20 fully support denial of this request to reschedule.

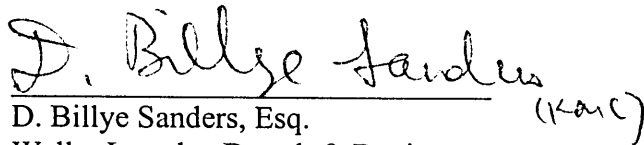
THEREFORE, the Applicant and Joint Petitioners respectfully request that the Motion to Reschedule Hearing be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Knox Walkup", written over a horizontal line.

John Knox Walkup, Esq.
Wyatt, Tarrant & Combs
511 Union Street, Suite 1500
Nashville, TN 37219-1720
(615) 244-0200

Attorney for A&L and
Memphis Networx, LLC

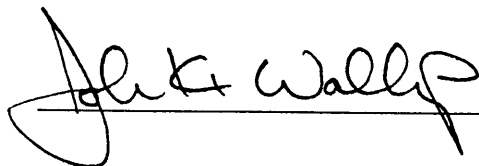
A handwritten signature in black ink, appearing to read "D. Billye Sanders", written over a horizontal line. To the right of the signature is the handwritten word "(Kanc)".

D. Billye Sanders, Esq. (Kanc)
Waller Lansden Dortch & Davis
A Professional Limited Liability Company
Nashville City Center
511 Union Street, Suite 2100
Nashville, TN 37219-8966
(615) 244-6380

Attorney for MLGW and
Memphis Networx, LLC

CERTIFICATE OF SERVICE

I, John Knox Walkup, hereby certify that on this 3rd day of July, 2000,
a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail
postage pre-paid to the Counsel of Record listed below.

 _____, Esq.

Henry Walker, Esq.
Boulton Cummings Connors & Berry, PLC
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Telecommunications, Inc.

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Attorney for Time Warner of the Mid-South, L.P.
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Association

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Brotherhood of Electrical Workers
Union, Local 1288

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Attorney for Concord Telephone
Exchange, Inc., Humphreys County
Telephone Company, Tellico Telephone
Company, Inc., and Tennessee Telephone
Company

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Consumer Advocate Division
Office of the Attorney General
& Reporter
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Nashville, Tennessee 37243-0500
Consumer Advocate Division

EXHIBIT 1

WARNING:

Changes in appearance and in display of formulas, tables, and text may have occurred during translation of this document into an electronic medium. This HTML document may not be an accurate version of the official document and should not be relied on.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF COMMISSION HEARING AND PREHEARING

CONFERENCE

**TO
ALL PARTIES OF RECORD
AND
ALL OTHER INTERESTED PERSONS
DOCKET NO. 990649-TP**

IN RE: INVESTIGATION INTO PRICING OF UNBUNDLED NETWORK ELEMENTS.

ISSUED: June 27, 2000

NOTICE is hereby given that the Florida Public Service Commission will hold a public hearing in the above-referenced docket.

The hearing will be held at the following time and place:

Monday - Wednesday, July 17-19, 2000
9:30 a.m.
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

PURPOSE:

The purpose of this hearing is to permit parties to present testimony and exhibits relative to the issues scheduled to be addressed in this phase of this proceeding.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at 1-800-955-8771 (TDD).

PREHEARING CONFERENCE

A prehearing conference will be held at the following time and place:

Thursday, July 6, 2000
9:30 a.m.
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

The purpose of this prehearing conference will be to finalize and limit, if possible, the number of issues and to determine what facts may be stipulated.

JURISDICTION

This Commission is vested with jurisdiction over the subject matter of this proceeding by the provisions of Chapter 364, *Florida Statutes*. This proceeding will be governed by Chapter 364 in addition to Chapter 120, *Florida Statutes*, and Rules 25-4, 25-22, 25-24, and 28-106, *Florida Administrative Code*.

By DIRECTION of the Florida Public Service Commission this
27th day of June, 2000.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the notice may be obtained by calling 1-850-413-6770.

(S E A L)

BK

This document was automatically converted to HTML using a program custom-written by the FPSC. If you have any questions or comments regarding this conversion, you can send e-mail to the programmers Allison Orange and Chip Orange.

EXHIBIT 2



The information in this and related pages was automatically generated from the Case Management System (CMS) of the FPSC and may be incomplete. For COMPLETE and OFFICIAL information from CMS, you MUST contact the Division of Records and Reporting at (850) 413-6770.

Docket 990649

Investigation into pricing of unbundled network elements.

- [Document Filings Index](#)
- [Events List](#)
- [Parties of Record and Interested Persons](#)
- [Staff Assigned](#)
- [Commissioners Assigned](#)

WARNING: THIS TIME SCHEDULE IS TENTATIVE AND SUBJECT TO REVISION.

Time Schedule (CASR) for Docket 990649:

Description	Previous Due Date	Due Date
*FAW Notice Filed	same	6/4/99
*FAW Notice Filed	same	6/9/99
*Order Establishing Procedure	same	7/20/99
*Testimony	same	8/11/99
*Testimony - Rebuttal	9/1/99	9/10/99
*Surrebuttal Testimony, If Any	10/11/99	10/15/99
*FAW Notice Filed for Prehearing	same	10/20/99
*Prehearing Statements	same	11/5/99
*FAW Notice Filed Rescheduled Prehearing	same	11/8/99
*Order Supplementing and Revising Order on Procedure	same	11/12/99
*FAW Notice Filed	same	11/17/99
*Revised Notice of Prehearing and Hearing	same	11/18/99
*Notice of Prehearing & Hearing	11/8/99	11/24/99
*Prehearing	11/15/99	12/2/99
*Transcripts Due for Prehearing	same	12/8/99
*Staff Recommendation - Interim Rates	same	1/20/00
*Issue Identification #1	same	1/31/00
*Agenda	same	2/1/00
*Issue Identification #2, if Necessary	same	2/7/00
*Standard Order - Interim Rates	same	2/21/00
*2nd Order Revising Procedure	same	3/16/00
*ILEC Cost Studies #1 (A)	same	4/17/00
*ILEC Cost Studies & Direct Testimony #1 (B)	same	5/1/00

*FAW Notice Filed	same	5/26/00
*Notice of Workshop	same	5/26/00
*FAW Notice Filed	same	5/31/00
*ALEC Rebuttal Testimony #1	6/2/00	6/1/00
*FAW Notice for Prehearing Filed	same	6/7/00
*Direct Testimony	same	6/8/00
*ILEC Cost Studies #2 (A)	same	6/15/00
*FAW Notice Filed for Hearing	same	6/21/00
*Prehearing Statements - Hearing #1	same	6/26/00
*Notice of Prehearing and Hearing	same	6/27/00
*ILEC Rebuttal Testimony #1	6/22/00	6/29/00
ILEC Cost Studies & Direct Testimony #2 (B)	same	6/30/00
Prehearing #1	same	7/6/00
Transcripts Due - Prehearing #1	same	7/13/00
Hearing #1 7/17-19/2000	same	7/17/00
ALEC Rebuttal Testimony #2	7/31/00	7/24/00
Transcripts Due - Hearing #1	7/24/00	8/2/00
ILEC Rebuttal Testimony #2	8/21/00	8/14/00
Prehearing Statements - Hearing #2	same	8/21/00
Prehearing #2	same	8/28/00
Transcripts Due - Prehearing #2	same	9/5/00
Hearing #2 9/19-22/2000	same	9/19/00
Transcripts Due - Hearing #2	same	9/25/00
Briefs Due	10/9/00	10/16/00
Staff Recommendation	10/4/00	2/7/01
Special Agenda	10/16/00	2/19/01
Standard Order	11/6/00	3/12/01

Note: an asterisk () indicates an event has been completed.*

Parties of Record and Interested Persons in Docket 990649:

- *
- *@link Networks, Inc.
Constance Kirkendall
2220 Campbell Creek Blvd., Suite 110
Richardson, TX 75082-4420
Phone: (972) 367-1700
Fax: (972) 367-1775*
- *
- *ALLTEL Communications Services, Inc.
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Represented by: Ausley Law Firm

- *
AT&T Communications of the Southern States, Inc.
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Represents: ALLTEL

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BlueStar Networks, Inc.
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Fax: (615) 346-3875

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Fax: 202-955-6460

Represents: ACI Corp

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Washington, DC 20036

Represents: Rhythms Links

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John Spilman
675 Peter Jefferson Parkway, Suite 310
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Fax: (804) 220-7701

Represented by: Swidler & Berlin

- *
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EMail: hgc@cgxcom.com

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Florida Cable Telecommunications Assoc., Inc.
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Fax: 681-9676

- *

*Florida Competitive Carriers Assoc.
c/o McWhirter Law Firm
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Fax: 222-5606*

• *

*Florida Digital Network, Inc.
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Fax: (407) 835-0309*

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- *Florida Public Telecommunications Assoc.
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Fax: 222-1355*

• *

*Global NAPS, Inc.
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Phone: (617) 507-5100
Fax: (617) 507-5200*

Represented by: Moyle Law Firm

• *

*GTE Florida Incorporated
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• *

*Hopping Law Firm
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Fax: 224-8551*

Represents: Rhythms Links, Covad

- *
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Phone: (813) 829-4093
Fax: (813) 829-4923
EMail: sasapperstein@intermedia.com

Represented by: Wiggins Law Firm

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Kelley Law Firm
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EMail: jacanis@kelleydrye.com

Represents: Z-Tel Communications

- *
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John McLaughlin
Suite 170
3025 Breckinridge Blvd.
Duluth, GA 30096
Phone: (770) 931-5260
Fax: (770) 638-6796

Represented by: Swidler Berlin Law Firm

- MCD Notice of Hearings (Telecommunications)

- *
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Ms. Donna C. McNulty
325 John Knox Road, Suite 105
Tallahassee, FL 32303-4131
Phone: (850) 422-1254
Fax: 422-2586

- *
MCI WorldCom, Inc.
Mr. Brian Sulmonetti
Concourse Corporate Center Six
Six Concourse Parkway, Suite 3200
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- *
McWhirter Law Firm
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Phone: 850-222-2525

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Represents: BlueStar Networks

- *MediaOne Florida Telecommunications, Inc.*
c/o Laura L. Gallagher, P.A.
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Phone: 850-224-2211
Fax: 561-6311
- *
Messer Law Firm
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Tallahassee, FL 32302
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Fax: 224-4359

Represents: e.spire, NorthPoint

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Represents: GNAPs

- *
Network Access Solutions Corporation
100 Carpenter Drive, Suite 206
Sterling, VA 20164
Phone: (703) 742-7700
Fax: (703) 742-7706

Represented by: Shook, Hardy & Bacon, L.L.P.

- *NorthPoint Communications, Inc.*
Glenn Harris, Esq.
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San Francisco, CA 94108
Phone: (415) 365-6095
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Represented by: Messer Law Firm

- *Office of Public Counsel*
Stephen C. Reilly
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Tallahassee, FL 32399-1400
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- *
Pennington Law Firm
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Represents: Time Warner Telecom of Florida, L.P.

- *
Rhythms Links Inc.
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Represented by: Hopping Law Firm, Blumenfeld & Cohen

- *SBC Telecom, Inc.*
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Fax: (210) 370-1098

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EMail: rjoyce@shb.com

Represents: Network Access Solutions Corporation

- *
Sprint Communications Company Limited Partnership
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Atlanta, GA 30339
Phone: (404) 649-6225
Fax: (404) 649-5174

- *
Sprint-Florida, Incorporated
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Fax: 878-0777

- *

Supra Telecommunications and Information Systems, Inc.
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- *

Swidler & Berlin
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Represents: Broadslate Networks/@Link Networks, Inc.

- *

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Eric J. Branfman/Morton Posner
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Fax: (202) 424-7645

Represents: Florida Digital Network, KMC

- Telephone (Alternative Local Exchange only)
- Telephone (Facility Based Carrier only)
- Telephone (Incumbent Local Exchange only)
- Telephone (Multi-Location Discount Aggregation only)
- Telephone (Operator Service Provider only)
- Telephone (Prepaid Debit Card Provider only)
- Telephone (Reseller only)
- Telephone (Switchless Rebiller only)

- *

Time Warner Telecom of Florida, L.P.
Carolyn Marek
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Franklin, TN 37069
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Fax: (615)376-6405

Represented by: Pennington Law Firm

- *

Wiggins Law Firm

Charles J. Pellegrini
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Fax: 385-6008

Represents: Intermedia Communications, Inc.

• *

Z-Tel Communications, Inc.
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Represented by: Kelley Law Firm

"*" indicates an entry which is an "official party of record".

Staff Assigned to Docket 990649:

- Kathleen Arant
 - Diana Caldwell
 - Penelope (Penny) Davis
 - David Dowds
 - Gregory (Greg) Fogleman
 - La'Ticca Iyamu
 - *Mary (Beth) Keating*
 - Laura King
 - Wayne Knight
 - Patricia (Pat) Lee
 - Peter (Pete) Lester
 - Anne Marsh
 - *Suzanne (Sue) Ollila*
 - Evan Smitha
 - Demetria Watts
 - Yiwen Yu
-
-

Commissioners Assigned to Docket 990649: